

REMARKS

Claims 1-9, 11-27, 37, 39-47, 54, 56-60, 62, 65-66, and 68 are currently pending in the application. Applicants have canceled claims 10, 28-36, 38, 48-53, 55, 61, 63-64, 67, and 69-71, and amended claims 2, 9, 37, 47, 59, and 62. Applicants request reconsideration of the application in light of the following remarks.

Request to Admit the Amendment

Applicant believes that the foregoing amendment complies with the Examiner's requirement of form. Applicant has accepted the allowable subject matter indicated by the Examiner and has amended the claims to place the indicated allowable subject matter in independent form throughout the claims. Claims sets in which no allowable subject matter was indicated have been canceled. No new issues have been raised by this amendment. Pursuant to 37 C.F.R. § 1.116(a), Applicant requests the Examiner admit the amendment. However, even if the Examiner decides not to admit the amendment under 37 C.F.R. § 1.116(a), Applicant respectfully requests the Examiner admit the amendment pursuant to 37 C.F.R. § 1.116(b), as presenting the claims in better form for appeal.

Restriction Requirement

Applicants acknowledge the withdrawal of claim 69 as being directed to a separate invention. Claim 69 has been canceled for possible pursuit in a continuing application.

Objections to Claims 2-8, 10-27, 38, 48, 61, 62

The Examiner has objected to claims 2-8, 38, 61, and 62 for indefiniteness, but has indicated that these claims would be allowable amended to be or depend from allowable base claim(s). Applicant has amended each of claims 2, 37, and 59 to provide the proper antecedent basis and effectively overcome the 35 U.S.C. §112 2nd rejections and the associated objections to claims 2-8, 38, 61, and 62. Furthermore, claims 38 and 61 have been canceled.

The Examiner has objected to claims 10-27 and 48 as depending from rejected base claims. The rejection of the base claims have been overcome by this amendment either by incorporation of patentable subject matter in the base claims or the filing of a terminal disclaimer herein. Claim 47 has been amended to overcome the objection. Furthermore, claims 10 and 48 have been canceled.

Therefore, Applicants respectfully request that the objections to claims 2-8, 10-27, 38, 48, 61, and 62 be withdrawn.

Rejections under 35 U.S.C. §112

Claims 2-8, 38, 48, 55, 59-62 and 70 were rejected by the Examiner under 35 U.S.C. 112. In accordance with this rejection, the claims have been amended to comply with the examiner's suggestions and are now believed to conform with Section 112. In particular, claims 2, and 59 have been amended to provide proper antecedent basis. Claims 38, 48, 55, 61, and 70 have been canceled. Applicants respectfully request that the rejection of claims 2-8, 38, 48, 55, 59-62 and 70 under 35 U.S.C. § 112 be withdrawn.

Rejections under 35 U.S.C. §102

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Brothers v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The identical invention must be shown in as complete detail as is contained in the claim. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

Claims 9, 28, 59, and 60 were rejected by the Examiner under 35 U.S.C. § 102(e) as being anticipated by Ryan (U.S. Patent No. 6,406,387, hereinafter “Ryan”). Applicants respectfully traverse this rejection and request reconsideration of the claims.

Base claims 9 and 59 have been amended to include the allowable subject matter of claims 10 and 61, respectively. Claim 28 has been canceled for presentation in a subsequent continuing application. Claim 60 is considered to be allowable as depending from allowable base claim 59.

Claims 37 and 47 were rejected by the Examiner under 35 U.S.C. § 102(b) as being anticipated by Muhlhausen (U.S. Patent No. 6,050,908, hereinafter “Muhlhausen”). Applicants respectfully traverse this rejection and request reconsideration of the claims.

Claims 37 and 47 have been amended to incorporate the matter of claims 38 and 48 respectively, which were indicated as allowable. Therefore, claims 37 and 47 are now considered to be allowable.

Claim 71 was rejected by the Examiner under 35 U.S.C. § 102(b) as being anticipated by Owen (U.S. Patent No. 3,116,926, hereinafter “Owen”). Claim 71 has been canceled.

Claims 28 and 71 have been canceled without traverse to obtain immediate allowance of the allowable subject matter. The rejections of claims 28 and 71 are, therefore, obviated.

Applicants respectfully request that the anticipation rejections of claims 9, 28, 37, 47, 59, 60, and 71 be withdrawn.

Rejections under 35 U.S.C. §103

To establish a *prima facie* case of obviousness under 35 U.S.C. §103, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Third, the cited prior art reference must teach or suggest all of the claim limitations. Furthermore, the suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based upon the Applicants’ disclosure. A failure to meet any one of these criteria is a failure to establish a *prima facie* case of obviousness. MPEP §2143.

Claims

Claims 29-34 were rejected by the Examiner under 35 U.S.C. § 103(a) as being unpatentable over Ryan (U.S. Patent No. 6,406,387, hereinafter “Ryan”), in light of Owen (U.S. Patent No. 3,116,926, hereinafter “Owen”).

Claims 35, 36, 49-52 and 67 were rejected by the Examiner under 35 U.S.C. § 103(a) as being unpatentable over Ryan (U.S. Patent No. 6,406,387, hereinafter “Ryan”), in light of Muhlhausen (U.S. Patent No. 6,050,908, hereinafter “Muhlhausen”).

Claims 53, 55, 63, 64 and 70 were rejected by the Examiner under 35 U.S.C. § 103(a) as being unpatentable over Ryan (U.S. Patent No. 6,406,387, hereinafter “Ryan”).

Claims 29-36, 49-53, 55, 63-64, 67, and 70 have been canceled without traverse to obtain immediate allowance of the allowable subject matter. The rejections of claims 29-36, 49-53, 55, 63-64, 67, and 70 are, therefore, obviated.

Applicants respectfully request that the obviousness rejections of claims 29-36, 49-53, 55, 63-64, 67, and 70 be withdrawn.

Double Patenting Rejection

Claims 1, 13-25, 28, 35, 36, 67 and 70 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-31 of U.S. Patent No. 10/434,553.

Claims 9, 11, 26, 28, 29-34, and 49-53 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-31 of U.S. Patent No. 10/434,553 in view of Owens.

In order to avoid further expenses and time delay, Applicants elect to expedite the prosecution of the present application by filing a terminal disclaimer to obviate the double patenting rejections in compliance with 37 CFR §1.321 (b) and (c). Applicants’ filing of the

terminal disclaimer should not be construed as acquiescence of the Examiner's double patenting or obviousness-type double patenting rejections. Attached is the terminal disclaimer and accompanying fee.

Claims 1 and 13-25 were only rejected under the judicially created doctrine of double patenting. Therefore, these claims are considered to be allowable in light of the accompanying terminal disclaimer.

Indication of Allowable Subject Matter

The Examiner indicated the allowability of the scope and subject matter of claims 3-8, 10-27, 38, 48, 61, and 62, but objected to the form and/or indefiniteness of the claims, they being dependent upon a rejected base claim. Applicants wish to thank the Examiner for this indication of allowable subject matter. The Examiner also rejected claim 2 for indefiniteness only. The format of claims 2, 9, 37, 47, and 59 have been amended herein to resolve the indefiniteness and to incorporate the elements of the respective allowable claims and all intervening claims, and are therefore allowable. Claims 10, 38, and 48 have been canceled and their matter has been incorporated into claims 9, 37, and 47. Rejected claims 28-36, 49-53, 55, 61, 63-64, 67, and 70-71 have also been canceled herein in favor of a continuation application which will pursue these claims further.

Confirmation of Allowed Claims

Applicants wish to thank the Examiner for his confirmation of the patentable subject matter of claims 10, 38, 48, and 61, which has been incorporated into claims 9, 37, 47, 59 respectively. Applicants also wish to thank the Examiner for his confirmation of the patentable subject matter of claims 2-8 and 11-27 if formal matters were resolved. Applicants further wish to thank the Examiner for his constructive confirmation of the patentable subject matter of claims 1 and 13-25 when a terminal disclaimer is filed.

Applicants still further wish to thank the Examiner for his confirmation of the patentable subject matter of allowed claims 39-46, 54, 56-58, 65-66, and 68. All formal matter having been resolved, claims 1-9, 11-27, 37, 39-47, 54, 56-60, 62, 65-66, and 68 remain in the application, and are considered to be allowable. Immediate allowance thereof is earnestly solicited.

Regarding Doctrine of Equivalents

Applicants hereby declare that any amendments herein that are not specifically made for the purpose of patentability are made for other purposes, such as clarification, and that no such changes shall be construed as limiting the scope of the claims or the application of the Doctrine of Equivalents.

CONCLUSION

Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

No new claims have been added resulting in no additional fees for claims. A terminal disclaimer is being filed herewith together with a check for the required fee of \$55.00.

If any fees, including extension of time fees or additional claims fees, are due as a result of this response, please charge Deposit Account No. 19-0513. This authorization is intended to act as a constructive petition for an extension of time, should an extension of time be needed as a result of this response. The examiner is invited to telephone the undersigned if this would in any way advance the prosecution of this case.

Respectfully submitted,

Date: November 30, 2004
By 

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